

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

Malibu Media LLC :
:
Plaintiff, :
:
v. : Case No. 1:13-cv-00512
:
OY :
Defendant :

DEFENDANT'S MOTION TO DISMISS

1. Defendant requests this Court dismiss the Plaintiff's Complaint, with prejudice. The grounds are that all of Plaintiff's factual allegations in its' Second Amended Complaint are provided by a contingent-fee witness, IPP Limited. (See paragraphs 16, 17, 18, 19,
2. The facts and legal arguments in support of Plaintiff's Motion to Dismiss has been fully briefed in support of **ISP SUBSCRIBER'S MOTION FOR AN ORDER TO SHOW CAUSE AS TO WHY ALL EVIDENCE AND DATA FROM TOBIAS FIESER AND HIS COMPANY IPP SHOULD NOT BE PRECLUDED AND THESE CASES DISMISSED**, filed March 28, 2014, in the following cases,

MALIBU MEDIA, LLC, Plaintiff, v. JOHN DOE subscriber assigned IP address 173.64.119.92, Defendant, Case No. 1:14-cv-0223-MJG
Assigned to: Honorable Marvin J. Garbis, United States District Judge

MALIBU MEDIA, LLC, Plaintiff, v. JOHN DOE subscriber assigned IP address 71.200.143.209, Defendant, Case No. 1:14-cv-0257-CCB
Assigned to: Honorable Catherine C. Blake, United States District Judge

MALIBU MEDIA, LLC, Plaintiff, v. JOHN DOE subscriber assigned IP address 76.100.228.15, Defendant. Case No. 1:14-cv-0263-RDB
Assigned to: Honorable Richard D. Bennett, United States District Judge

3. The essence of the Order to Show Cause filed in the above cases is that IPP Limited was at all times in question being paid on a contingent fee basis, where payment was

dependent upon the Plaintiff in each case recovering damages or being paid to settle a case.

4. This witness contingent fee arrangement is contrary to the 4th Circuit's long-held tradition that witnesses are not to be paid fees that are contingent on the outcome of the case. *See Accrued Fin. Servs., Inc. v. Prime Retail, Inc.*, 298 F.3d 291, 300 (4th Cir. 2002); *Farmer v. Ramsay*, 159 F. Supp. 2d 873, 883 (D. Md. 2001) *aff'd on other grounds*, 43 Fed. Appx. 547, 551 (4th Cir. 2002).
5. The American Medical Association's Code of Medical Ethics covers contingent fees: Opinion 6.01 - Contingent Physician Fees states that "If a physician's fee for medical service is contingent on the successful outcome of a claim, such as a malpractice or worker's compensation claim, there is the ever-present danger that the physician may become less of a healer and more of an advocate or partisan in the proceedings. Accordingly, a physician's fee for medical services should be based on the value of the service provided by the physician to the patient and not on the uncertain outcome of a contingency that does not in any way relate to the value of the medical service. Opinion 6.01, available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.page> (last accessed June 10, 2014).
6. The parallel is unmistakable: an expert in a highly technical field cannot be paid a fee that is contingent on the outcome of the case because there is the ever-present danger that the expert will become an advocate, instead of a neutral person.
7. For the reasons above, and the arguments further elaborated in the Order to Show Cause motions filed by three other Malibu Media defendants, jointly, this case should be dismissed with prejudice.

DATED: June 11, 2014

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June 2014, a copy of the foregoing Answer to Second Amended Complaint was filed electronically. Notice of this filing will be sent to the following counsel by operation of the Court's electronic filing system:

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